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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/386,641	08/31/1999	BEN BALDWIN	SAB-017	1633

7590 11/10/2003

LAW OFFICES OF DAVID P GORDON  
65 WOODS END ROAD  
STAMFORD, CT 06905

EXAMINER
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JEANTY, ROMAIN

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 11/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/386,641

Applicant(s)

BALDWIN ET AL.

Examiner

Romain Jeanty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### **Response to Arguments**

1. In view of the Reply Brief filed on June 11, 2003, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Objections***

2. Claim 22 is objected to because of the following informalities: Lines 3 and 6, it appears that a “,” is missing after openings on. Applicant is suggested to insert a “,” after openings in order for the claim to be consistent with method claim 1.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

4. Claims 1, 3-17 and 22-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of

- (1) whether the invention is within the technological arts;
- (2) whether the invention produces a useful, concrete and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to be statutory, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1 and 22 are directed to nothing more than a human making mental computations and manually receiving, storing employment position, receiving candidate data, comparing said candidate data.... and providing a list to the candidate. None of these steps apply, involve, use, or advance the technological arts (no computer implementation). Rather, these steps are merely a process for matching an employment candidate to specific employment positions performed by humans. It is respectfully submitted that the recited invention in claim 1, is merely an abstract idea that may be implemented by humans/organizations.

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At best, claims 1 and 22, only represents an abstract idea of how to match an employment candidate to specific employment position from multiple employers. These steps amount to mere abstract idea since no technological arts are attributed to how these claimed processes are implemented. Claims 3-17 and 23-24 depend on claims 1 and 22 and are similarly rejected.

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern et al (U.S. Patent No. 5,978,768) in view of Wagner "Employees selection makes Ritz tradition. (Ritz-Carlton Hotel Co.'s Targeted Selection Process employment program)".

As to claim 1, McGovern et al discloses a process and system for predictive resource planning comprising:

Receiving employment positions from a plurality of employers "hiring contact", which reads on "for each of a plurality of available employment positions, receiving employment position" (see abstract; col. 9, lines 23-62),

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storing the employment position data (col. 9, lines 56-62);

receiving a job seeker position information, which reads on “receiving individual candidate data representative of personality profile for said employment candidate” (col. 14, line 66 through col. 15, line 15);

comparing the job seeker information with the hiring contact’s job position information, which reads on “comparing said individual candidate data with the employment position data to produce a list of potential employment positions for said candidate, from said employment positions, match said individual candidate data, providing said list to said candidate” (col. 15, lines 15-28).

McGovern et al discloses all of the limitations above, but does not explicitly disclose data measuring a plurality of defined personality traits for suitable candidates for that employment position, a list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data. Wagner, in the same field of endeavor, discloses the idea of obtaining job position data and personality traits information from an employee and matching said position data. (See entire page 1 of Wagner). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al to incorporate the teachings of Wagner. A person having ordinary skill in the art would have been motivated to use such a modification in order to ensure a successful match of employee with employment. Providing a list to the candidate is not explicitly stated in McGovern et al. However, Wagner states “If you are not right for one position, you might be perfectly targeted to another position”. Thus, in so doing, a potential candidate being qualified for more than one position would have been presented with a list of available identified positions. It would have

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been obvious to one of ordinary skill in the art at the time of the invention to incorporate these teachings in McGovern et al with the motivation of providing a list of all possible job positions a candidate is qualified for thus obtaining the best candidate for the best suited position.

As per claim 2, McGovern et al discloses a computer for a computing device for performing the steps in claim 1 above (i.e. a computer and software) (col. 6, lines 57-65).

As per claims 3-4, McGovern et al does not explicitly disclose providing the candidate with a candidate questionnaire in order to determine the individual candidate data and thereby assessing a personality profile. Wagner discloses an employee selection process involving questioning a job applicant for obtaining personality traits data. See page 1 of Wagner. Wagner in the same field of endeavor, discloses wherein one of the personality traits of an employee is poise (Page 1 paragraph 4). Wagner further teaches providing a series of questions and interviews to the job applicant. It would have been obvious to one of ordinary skill in the art to note that these set of questions and interviews are similar to a questionnaire. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Wagner into McGovern et al for analysis purposes and in order to discover certain criteria from a job applicant. Further motivation for combining McGovern et al with Wagner has been recited in claim 1 above.

As per claim 5, the teachings of McGovern et al and Wagner are discussed above. Wagner further teaches that the questions are derived or obtained from skilled workers at defined positions. See page 1 of Wagner. It would have been obvious to one of ordinary skill in the art to present the same questionnaire to both employers and potential employees in the combination

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of McGovern et al and Wagner in order to ascertain that answers from job applicants are those that best matched an employers answer or interest from the job applicant.

As per claim 16, applicant is directed to the rejection of claim 1 above.

As per claim 17, McGovern et al does not explicitly disclose wherein at least one of the defined plurality traits is poise. Wagner in the same field of endeavor, discloses wherein one of the personality traits of an employee is poise (Page 1 paragraph 4. The motivation for combining McGovern et al with Wagner has been recited in claim 1 above.

Claim 18 recites a computer readable medium, storing computer software that when loaded into a computing device for performing the steps of method claim 1. The rationale of rejecting claim 1 is discussed above. McGovern et al is a computer device having software means for performing various functions. The combination of McGovern et al and Wagner would have resulted a computer readable medium, storing computer software that when loaded into a computer device performs the functions recited in claim 1 above.

As to claim 19, McGovern et al discloses a computerized job search system and method for posting and searching job openings via a computer network. The system and method comprise:

A processor, a computer memory in communication with the processor, said computer memory storing processor readable (col. 6, lines 40-65) instructions adapting said computing device to:

receiving employment positions from a plurality of employers “hiring contact”, which reads on “for each of a plurality of available employment positions, receiving employment position” (see abstract; col. 9, lines 23-62),



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storing the employment position data (col. 9, lines 56-62);

receiving a job seeker position information, which reads on “receiving individual candidate data representative of personality profile for said employment candidate” (col. 14, line 66 through col. 15, line 15);

comparing the job seeker information with the hiring contact’s job position information, which reads on “comparing said individual candidate data with the employment position data to produce a list of potential employment positions for said candidate, from said employment positions, match said individual candidate data, providing said list to said candidate” (col. 15, lines 15-28).

McGovern et al discloses all of the limitations above, but does not explicitly disclose data measuring a plurality of defined personality traits for suitable candidates for that employment position, a list identifying those of said employment positions for which defined personality traits, as reflected by said employment position data. Wagner, in the same field of endeavor, discloses the idea of obtaining job position data and personality traits information from an employee and matching said position data. (See entire page 1 of Wagner). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al to incorporate the teachings of Wagner. A person having ordinary skill in the art would have been motivated to use such a modification in order to ensure a successful match of employee with employment. Providing a list to the candidate is not explicitly stated in McGovern et al. However, Wagner states “If you are not right for one position, you might be perfectly targeted to another position”. Thus, in so doing, a potential candidate being qualified for more than one position would have been presented with a list of available identified positions. It would have

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been obvious to one of ordinary skill in the art at the time of the invention to incorporate these teachings in McGovern et al with the motivation of providing a list of all possible job positions a candidate is qualified for thus obtaining the best candidate for the best suited position.

As per claim 20, McGovern et al discloses limitations of claim 20 in the rejection of claim 19 above. In addition, McGovern et al discloses a network interface, in communication with said processor and in for interconnection with a computer network to receive said employment position data and said individual candidate data from said computer network (col. 4, lines 32-44).

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern et al (U.S. Patent No. 5,978,768) in view of Wagner "Employees selection makes Ritz tradition. (Ritz-Carlton Hotel Co.'s Targeted Selection Process employment program)" as applied to claim 1 and further in view of Jane (The Computer Psychologist).

As per claim 21, the combination of McGovern et al and Wagner does not explicitly disclose psychometric test to assess said personality profile. Jane on the other hand, discloses the idea of using a psychometric test to assess a candidate personality profile. Note pages 2-7. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al and Wagner to include the psychometric test assessment of Jane in order to determine quantitative skills of the candidate.

8. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern et al (U.S. Patent No. 5,978,768) in view of Wagner "Employees selection makes Ritz tradition. (Ritz-Carlton Hotel Co.'s Targeted Selection Process employment program) as applied to claim 1 above and further in view of Puram et al (U.S. Patent No. 6,289,340).

As per claims 6, 7, 8 and 9, the combination of McGovern et al and Wagner does not explicitly disclose numerical values and ranges indicative of personality traits. Puram et al on the other hand, in the same field of endeavor, discloses a matching system comprising data having numerical values and ranges for calculating a candidate profile score for best-fit matches (col. 8, lines 47-60). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al and Wagner to include the teachings of Puram. A person having ordinary skill in the art would have been motivated to use such a modification in order to match candidates to positions, thus enhancing the selection criteria into a make perfect match.

9. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern et al in view of Wagner and in view of Puram et al as applied to claims 1 and 9 above and further in view of Haq et al (U.S. Patent No. 6,275,012).

As per claims 10-12, the combination of McGovern et al, Wagner, and Puram et al is discussed above. However, the combination does not explicitly disclose the use of calculating a metric comparing each trait of said candidate. However, Haq et al discloses the idea of a calculated metric for calculating an employee skill (see figure 3 and column 8, lines 47-60). It would have been obvious to a person of ordinary skill in the art to modify the teachings of McGovern et al, Wagner, and Puram et al to include the Haq et al's calculated metric. A person having ordinary skill in the art would have been motivated to use such a modification in order to optimize the assignment of employees to positions thus, further enhancing the selection criteria.

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10. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGovern et al in view of Wagner as applied to claims 1 and 9 above and further view of Feldbau et al (U.S. Patent No. 6,571,334).

Regarding claim 13 and 14, McGovern et al teaches the step of performing a validation operation whether to upload a computer readable file/document (col. 14, lines 44-49). However the combination of McGovern et al and Wagner fails to explicitly disclose providing a candidate/job seeker with an authenticator. Feldbau et al discloses the idea of using an authenticator for authenticating a document for secure transmission (col. 9 line 50 through col. 10 line 19). Incorporating the teachings of Feldbau et al into the disclosures of McGovern et al and Wagner would have been obvious to a person of ordinary skill in the art with the motivation to securing the transmission of the listing/document, thereby ensuring the document reaches its recipient without being tampered with.

Regarding claim 15, the combination of McGovern et al and Wagner does not explicitly disclose a list containing identifier of employers. It would have been obvious to a person of ordinary skill in the art to include employer's identifier in the disclosures of McGovern et al and Wagner with the motivation to allow an employee to appropriately make an employer selection for a desired employment position.

11. Claim 22-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurzius et al (U.S. Patent No. 6,385,620) in view of Wagner (Employees selection makes Ritz tradition (Ritz-Carlton Hotel Co.'s Targeted Selection Process employment program)) or Jane (The computer Psychology).

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As per claims 22, 23, 24, 25 and 26, Kurzius et al discloses a system and method for the management of candidate recruiting information. The system comprises:

Receiving and storing personality profile of candidates for job openings (col. 5, lines 49-57), which reads on “for each of said employment positions/openings, storing aggregate personality profiles”;

Providing a survey form to the candidate, which reads on” providing a questionnaire a survey to a candidate” (col. 5, lines 51-55);

Administering a questionnaire to an employment seeker as a survey form to enter various qualification data (col. 9, line 52 to column 10, line 25);

candidate matching engine for matching the candidate profiles with the an employer stored job posting criteria, which reads on, “comparing said personality profile of said employment seeker to said aggregate personality profiles, to determine ones of said employment openings suiting said personality profile of said employment seeker” (col. 15, lines 3-23 and col. 8, lines 48-63).

Kurzius et al teaches all of the limitations above, but fails to teach a personality profile reflective of a personality trait of the candidate. Wagner, in the same field of endeavor, discloses personality profile reflective of personality trait of job seekers and matching said personality trait (See page 1). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of McGovern et al to incorporate the teachings of Wagner. A person having ordinary skill in the art would have been motivated to use such a modification in order to ensure a successful match of employee with employment.

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Wagner in the same field of endeavor, discloses wherein one of the personality traits of an employee is poise (Page 1 paragraph 4). Wagner further teaches providing a series of questions and interviews to the job applicant. It would have been obvious to one of ordinary skill in the art to note that these set of questions and interviews are similar to a questionnaire. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Wagner into Kurzius et al for analysis purposes and in order to discover certain criteria from a job applicant.

Alternatively, Jane discloses the idea of assessing a candidate personality profile based on interviews given to the candidate and response obtained from the candidate. (See pages 2-7). It would have been obvious to a person of ordinary skill in the art at the time of applicant's invention to modify the disclosures of Kurzius et al with Wagner or Jane to include the personality assessment data therein. A person having ordinary skill in the art would have been motivated to use such a modification in order to determine the quantitative skills of all candidate seeking a particular position.

As per claim 27, Kurzius et al teaches a system for automated candidate recruiting on a network including a computer-readable medium and a computer program encoded on the computer-readable medium, the computer program operable to be executed on a computer, the computer program further operable to perform the method of claim 22.

### **Conclusion**

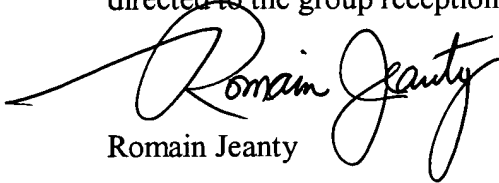
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (703) 308-9585. The examiner can normally be reached on weekdays from 8:00 am to 4:30 p.m.

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If attempts to reach the examiner are not successful, the examiner's supervisor, Tariq R. Hafiz, can be reached at (703) 305-9643.

The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5357.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-3900.

A handwritten signature in black ink, reading "Romain Jeanty". The signature is stylized with a large, looping "R" and a cursive "Jeanty".

Romain Jeanty

Patent Examiner

October 30, 2003